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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,279	04/13/2004	Merle R. Ellis	00521-04	4589
7590 05/18/2005			EXAMINER	
Walter L. Beavers 326 South Eugene Street Greensboro, NC 27401			COHEN, AMY R	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/823,279

Applicant(s)

ELLIS ET AL.

Examiner

Amy R. Cohen

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiegman (U. S. Patent No. 1,006,815) in view of Jones (U. S. Patent No. 3,153,859).

Claims 1, 3-5: Wiegman discloses a guide (7, 8, 9) for a measuring device comprising: a first longitudinal member (7), a second longitudinal member (8), means to adjustably connect (9) said first and second longitudinal members, said adjustable connecting means joined to said first and second longitudinal members to maintain said longitudinal members in parallel alignment (Col 2, line 105-Col 3, line 7).

Wiegman discloses said guide wherein said adjustable connecting means comprises a threaded member (9) (Col 2, lines 105-109).

Wiegman discloses said guide wherein said adjustable connecting means comprises a pair of threaded members (9) (Col 2, lines 105-109).

Wiegman does not disclose the guide comprising a first resilient member, said first resilient member positioned between and in contact with said first and second longitudinal members to maintain said longitudinal members spaced from each other; comprising a second resilient member, said first and second resilient members each comprising a spring; each of said springs positioned on different ones of said threaded members.

Art Unit: 2859

Jones discloses a guide comprising a first resilient member (29b), said first resilient member (29b) positioned between and in contact with said first and second members (11, 12, 22) to maintain said members spaced from each other (Figs. 1, 3, 5, 9, and Col 1, lines 18-26); comprising a second resilient member (29b), said first and second resilient members each comprising a spring (Col 2, lines 35-40), each of said springs positioned on different ones of said threaded members (Col 2, lines 31-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the guide of Wiegman to include resilient members, as taught by Jones, so that the variable friction pressure against the first and second members is maintained (Jones, Col 1, lines 18-26).

Claims 6-8, 16: Wiegman discloses in combination, a measuring device and a guide, said guide attached to said measuring device, said measuring device comprising: a base (12), a level (13), said level pivotally joined (25) to said base, and a protractor (20), said protractor mounted on said base (Fig. 1); said guide comprising: a first and a second longitudinal member (7, 8), a pair of adjustable members (9); said pair of adjustable members each attached to said first and said second longitudinal members to maintain said guide on said measuring device (Figs. 1, 2 and Col 2, line 105-Col 3, line 7).

Wiegman discloses the combination wherein said base is pivoted from said level at a desired angle and said guide is attached to said base and said level (Figs. 1 and 2).

Wiegman does not disclose the guide comprising a pair of resilient members, each of said resilient members positioned between and in contact with said first and second longitudinal members to maintain space therebetween; said pair of resilient members is positioned on a different one of said adjustable members.

Art Unit: 2859

Jones discloses a combination comprising a guide comprising a pair of resilient members (29b), each of said resilient members (29b) positioned between and in contact with said first and second members (11, 12, 22) to maintain space therebetween (Figs. 1, 3, 5, 9 and Col 1, lines 18-26); said pair of resilient members is positioned on a different one of said adjustable members (Col 2, lines 31-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the guide of Wiegman to include resilient members, as taught by Jones, so that the variable friction pressure against the first and second members is maintained (Jones, Col 1, lines 18-26).

Regarding claim 16: Wiegman does not disclose the combination wherein said measuring device further comprising a hinge, said hinge pivotally joining said level to said base, said hinge positioned to allow the end of said level to rest on said base when said measuring device is fully opened whereby said level extends longitudinally normally from said base.

Jones discloses a combination wherein said measuring device further comprising a hinge (48), said hinge pivotally joining said level (11) to said base (12), said hinge positioned to allow the end of said level to rest on said base when said measuring device is fully opened whereby said level extends longitudinally normally from said base (Figs. 7, 8 and Col 3, lines 52-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Wiegman to include a hinge connecting the level and base, as taught by Jones, so that the device could be compactly stored without worry of loss of parts (Jones, Col 3, lines 52-67).

Claims 9-15, 17: Wiegman discloses a method of pattern marking a blank (1) using a measuring device (11, 12) having a pivotal base and a guide having a pair of longitudinal

Art Unit: 2859

members (7, 8) adjustably connected (9) and spaced from one another to receive the measuring device therebetween comprising the steps of: opening the measuring device to a desired angle (Col 3, lines 8-40); placing the guide over the opened measuring device whereby the opened measuring device is between the pair of longitudinal members (Col 2, lines 41-56); and tightening the guide thereon (Col 2, lines 41-56).

Wiegman discloses the method comprising the step of placing the guide against the edge of the blank with the measuring device atop the blank (Figs. 1, 2 and Col 2, lines 96-104, Col 4, lines 82-105).

Wiegman discloses the method comprising the step of marking the blank along the outside of the measuring device (Col 4, line 115-Col 5, line 15).

Wiegman discloses the method comprising removing the guide and measuring device from the blank (Fig. 1, the guide and measuring device must be removed in order to continue to mark along the length of the blank as shown in Figs. 1 and 2, wherein the steps of placing the guide and measuring device at another position along the blank, and repeating the steps are also shown in Figs. 1 and 2).

Wiegman discloses the method wherein the measuring device comprising a level (13) pivotally joined to the base whereby the measuring device is fully opened when the level extends normally from the base (Figs. 1 and 2).

Wiegman does not disclose the method wherein the pair of longitudinal members are resiliently spaced from one another, and specifically comprising the step of cutting the blank along the marking.

Jones discloses a method comprising a guide comprising a pair of resilient members (29b), each of said resilient members (29b) positioned between and in contact with said first and

Art Unit: 2859

second members (11, 12, 22) to maintain space therebetween (Figs. 1, 3, 5, 9 and Col 1, lines 18-26); and specifically comprising the step of cutting the blank along the marking (Col 3, lines 43-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the guide of Wiegman to include resilient members, as taught by Jones, so that the variable friction pressure against the first and second members is maintained (Jones, Col 1, lines 18-26)

### *Response to Arguments*

3. Applicant's arguments with respect to claims 1, 3-17 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose measuring device Butwin (U. S. Patent No. RE 38,032), Wilson (U. S. Patent No. 4,729,173), Tarperi (U. S. Patent No. 2,582,892), Hall (U. S. Patent No. 1,289,047), Len (U. S. Patent No. 1,056,917), and Levy (U. S. Patent No. 327,283).

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 2859


the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARC  
May 16, 2005



Christopher Fulton  
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